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05 - 10441 MLW

AO 243 (Rev. 5/85)

2005 MAR -4 P 1:23

**MOTION UNDER 28 U.S.C. § 2255 TO REVOKE DISTRICT COURT  
JUDGMENT, OR CORRECT SENTENCE  
BY A PERSON IN FEDERAL CUSTODY**

United States District Court SOUTH BOSTON District SOUTH BOSTON MASSACHUSETTS

Name of Movant HERRERA YOLANDA

Prisoner No. 23564038

Case No.

1;01CR10056002 MLW

UNITED STATES OF AMERICA

V.

HERRERA YOLANDA

MAGISTRATE JUDGE RDC

(name under which convicted)

**MOTION**

1. Name and location of court which entered the judgement of conviction under attack SOUTH BOSTON  
MASSACHUSETTS UNITED STATES DISTRICT COURT DISTRICT/MASSACHUSETTS
2. Date of judgement of conviction SEPTEMBER 12 2002
3. Length of sentence 87 MONTHS
4. Name of offense involved (all counts) 21 U.S.C. & 846 CONSPIRACY TO DISTRUTE HEROIN.

5. What was your plea? (Check one)

- (a) Not guilty ☐  
 (b) Guilty ☒ **XX**  
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give detail:

NOT APPLY

If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐  
 (b) Judge only ☐ **NOT APPLY**

Did you testify at the trial?

Yes ☐ No ☒ **XX**

Did you appeal from the judgment of conviction?

Yes ☒ **XXX** No ☐

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9. If you did appeal, answer the following:

- (a) Name of court UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT
- (b) Result DENIED AFFIRMED.
- (c) Date of result MAY 27 2004

10. Other than a direct appeal from the judgement of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgement in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of Court NOT APPLY

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised NOT APPLY

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result NOT APPLY

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised NOT APPLY

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result NOT APPLY

(6) Date of result \_\_\_\_\_

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- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL.

Supporting FACT (state briefly without citing cases or law) ATTORNEY DID NOT ADVISE ME PROPERLY ON MY SENTENCING PHASE.. HE DID NOT ADVISE ME ON THE GUIDELINES CORRECTLY. HE DID AS HE PLEASED, WITHOUT TAKING ME INTO CONSIDERATION, INTO WHAT I FELT OR HOW I FELT ABOUT IT.

B. Ground two: BOOKER FAN FAN CASE GUIDELINES STATUTORY MAXIMUMS.

Supporting FACT (state briefly without citing cases or law) THE BOOKER RULE INVALIDATED THE GUIDELINES BOTH ON A SIXTH AMMENDMENT AND JURY TRIAL VIOLATION AS WELL AS THE APPRENDI DUE PROCESS DOCTRINE JOINTLY THOSE BASIS-- COMPEL ---- RETROACTIVITY.....

C. Ground three: BLAKELY V. WASHINGTON.

Supporting FACT (state briefly without citing cases or law) THE BLAKLEY DECISION FURTHER CONFIRMS THAT GUIDELINES MAXIMUMS CONSTITUTE THE FUNCTIONAL EQUIVALENT OF STATUTORY MAXIMUM FOR PURPOSES OF AN APPRENDI ANALYSIS. I ASK THAT YOU PLEASE REVIEW MY CASE FOR PLAIN ERROR AS WELL AS FOR PUNISHMENT ENHANCING FACTS PREVIOUSLY DETERMINED BY THE JUDGE BY THE 50% PLUS PREPONDERANCE OF THE EVIDENCE. STANDARD, NOW REQUIRED TO BE PROVED TO A JURY BY THE 90% PLUS BEYOND A REASONABLE DOUBT STANDARD.

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(g) On appeal from any adverse ruling in a post-conviction proceeding: NOT APPLY

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒ XXX

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgement under attack?

Yes ☐ No ☒ XXX

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

NOT APPLY

(b) Give date and length of the above sentence: NOT APPLY

(c) Have you filed, or do you contemplate filing, any petition attacking the judgement which imposed the sentence to be served in the future?

Yes ☐ No ☒ XXX

Wherefore, movant prays that the Court grant him/her all relief to which he/she may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on:

3/1/05

Date

Isolinda Herrera

Signature of Movant